THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NOs. 9087 OF 2001

Date: 07.02.2006

Between:

G. Narsi Reddy, S/o Biksham Reddy and others.

… Petitioners.

And

The Regional Manager, Central Warehouse Corporation, (A. Government), Regional Office, Nampally, Hyderabad and another.

… Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NOs. 9087 OF 2001

ORDER:

In this writ petition the petitioners (four in number), seek a direction to the 1st respondent to drop all further action pursuant to the enquiry report submitted by the 2nd respondent in proceedings dated 11.12.1997, in view of the judgment of the

Judicial First Class Magistrate, Suryapet in C.C.No.74/87 dated 14.9.1987.

Facts to the extent relevant for this writ petition are that petitioners were working a chowkidars with the Central Warehousing Corporation ever since 1986. In the intervening night of 1st/2nd of December, 1986, six bags of rice were stolen from the Central Warehousing Corporation godown resulting in the petitioners being placed under suspension. The petitioners were removed from service in the month of Febrary, 1987. Questioning the same they filed W.P.Nos.16198, 16193, 16200 and 16163 of 1987. Interim orders were granted and eventually the writ petitions came to be disposed of by a common order on 2.2.1995 setting aside the order of removal and leaving it open to the authorities to hold a disciplinary enquiry into the charge of theft. In the meanwhile, C.C.No.74/87 was filed before the Judicial First Class Magistrate, Suryapet for the offences punishable under Sections 457 and 381 I.P.C. After an elaborate trial and enquiry, the Judicial First Class Magistrate, taking into consideration the entire material available on record, acquitted all the accused, including the petitioners herein, by judgment dated 14.9.1987. On completion of the enquiry, the enquiry officer submitted his report on 11.12.1997 holding that the charges leveled against the petitioners were not proved. The 1st respondent issued memo dated 25.11.1999, differing with the findings of the enquiry officer and called upon the petitioners to submit their statement of defence thereto. The petitioners herein submitted their statement of defence on 10.1.2000. Before final orders were passed, the petitioners approached this court, by way of the present writ petition. This court by order dated 6.6.2001, in W.P.M.P.11499/01 in W.P.9087 of 2001, granted interim stay of all further proceedings. On 18.7.2001, the 1st respondent passed an order imposing on the petitioners, the punishment of reduction in the time scale of pay by four stages for two years with immediate effect.

However, the said order was cancelled by proceedings dated 1.8.2001. The only contention of Sri A.V.Sesha Sai, learned counsel for the petitioners, is that since the petitioners were acquitted in the criminal case, no disciplinary proceedings could be instituted for the very same charge on which the criminal court had acquitted them on merits. Sri G.Ramachandra Rao, learned standing counsel for the respondents, would submit that criminal proceedings stand on a different footing from that of disciplinary proceedings and merely because the charges were the same, the respondents were not precluded, in law, from conducting a departmental enquiry on the very same charges. Learned standing counsel would submit that in

any event, since the witnesses, in the criminal proceedings and disciplinary proceedings, were not common, the respondents were justified in conducting a departmental enquiry against the petitioners herein. Learned standing counsel would submit that the disciplinary authority is entitled to differ with the findings of the enquiry officer and since the punishment imposed by proceedings dated18.7.2001 has been cancelled, vide proceedings dated 1.8.2001, no punishment can be said to have been imposed on the petitioners, as yet. Learned counsel would submit that the writ petition, as filed, is premature and that the respondents could not be prohibited from proceeding with the disciplinary enquiry in accordance with the statutory regulations in force.

In **Sk.Ahmed v. Labour Court**, this Court, after a detailed survey of the earlier judgments of the Apex Court, held thus:

"From the decisions referred to herein above, it is clear that an employer can proceed against its employee and initiate departmental enquiry as well as criminal prosecution on the same set of facts. In appropriate case, even the civil proceedings could be initiated. There is no bar in law to initiate all the proceedings simultaneously. In appropriate proceedings, the Court may stay the departmental proceedings, if the Court comes to a conclusion that it may not be 'desirable', 'advisable', or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. It is not a matter of course, but required to be taken having regard to the facts and circumstances in each case. One of the most important considerations that may have to be taken into account before stalling the departmental proceedings is that the defence of the employee in the criminal case may be prejudiced if the departmental enquiry is simultaneously held. This may be done in cases of grave nature involving complicated questions of fact and law. It is well settled that acquittal in a criminal case by the competent court of criminal jurisdiction does not confer any automatic right upon the delinquent employee for his reinstatement into service, even if the prosecution and the departmental enquiry is based on the same set of facts. The distinction between the criminal proceeding and the departmental proceeding is clear. The nature of proof required in a criminal case for establishing the charges and the departmental proceedings for proving the misconduct is not one and the same. It cannot be said that the charges in a criminal case and departmental proceedings would be the same, merely because the same set of facts are involved. The question that falls for consideration in a criminal case as to whether the charged person is guilty of offence punishable under Indian Penal Code or any penal statutes for the time being in force, whereas in a departmental enquiry what is required to establish is as to whether the employee is guilty of misconduct. The misconduct is invariable defined by the rules or regulations, as the case may be by which an employee's conduct is regulated. The misconduct under rules or regulations is entirely different fro that of an offence under Indian Penal Code or any penal statues, as the case may be. On the same set of facts, the disciplinary authority and the criminal Court can come to different conclusions with the regard to the allegations made against the delinquent officer. The conclusions so reached operate in different fields. The

consequences that flow from such conclusions are also different. “

I n **V.Srinivas v. Superintendent of Police, Medak District**, a Division Bench of this Court held thus:

“There cannot thus be any dispute whatsoever that both the criminal charges and the departmental proceedings proceed simultaneously…….

…….It is further well settled that even in a case where the criminal trial ends in acquittal in favour of the delinquent employee, there does not exist any embargo on the part of the disciplinary authority in initiating disciplinary proceedings on the self same charges. As noticed hereinbefore, in Paul Anthony’s case (1999)3SCC 679), the Supreme Court itself has categorically held that it is possible that a person can be fund guilty of commission of misconduct despite his acquittal in the criminal trial. The learned counsel for the petitioner, however, would urge that as in the instant case the criminal trial and the departmental proceedings are based on the same set of facts and the evidence adduced before the Criminal Court and the disciplinary authorities being the same without any variance, exception to the aforementioned rule would be attracted. The learned counsel, however, could not produce any material whatsoever in support of the aforementioned contention before this Court. Even the judgment of the criminal case has not been produced. “

I n **Nagarjuna Grameena Bank, Khammam v. Mandulla Beerappa**, a Division Bench of this Court held thus:

“Although several decisions were cited before us by both the learned counsel relating to the circumstances under which a disciplinary proceeding could be initiated against the delinquent official despite the acquittal of such delinquent by a criminal court on the ground that the charge is not proved beyond reasonable doubt, would not come in the way of a disciplinary authority either initiating disciplinary proceedings after the acquittal or pursuing the disciplinary proceedings already initiated by the date of acquittal……..”

In **Nazeer Ahmed v. Govt. of A.P., Home Department**, a Division Bench of this Court held thus:

“…….. Only because an order of acquittal has been passed, the same by itself cannot be a ground for quashing the said proceedings. It is now well settled principle of law that criminal proceedings and departmental proceedings stand on different footings. Even in a case where criminal proceedings have been initiated there is no bar in initiating a departmental proceedings. The standard of proof required in both the proceedings is absolutely different. Whereas in a criminal case an accused has to be proved to be guilty of commission of an office beyond all reasonable doubt, in a departmental proceedings preponderance of probability would suffice.”

The law laid down by the aforesaid judgments of this Court is that mere pendency of criminal proceedings does not preclude the authorities from initiating disciplinary

proceedings for the very same charge, since the scope of disciplinary proceedings is different from that of criminal proceedings. While the degree of proof required in criminal proceedings is proof beyond reasonable doubt, in disciplinary proceedings it is that of preponderance of probabilities. While disciplinary proceedings are initiated for misconduct prescribed either under the certified standing orders or in the rules and regulations governing employees of the establishment, criminal proceedings are for offences under the Indian Penal Code and other statutes.

In **Cap.M.Paul Anthony v. Bharat Gold Mines Ltd,** the Supreme Court held thus:

"There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, "the raid conducted at the appellant's residence and recovery of incriminating articles therefrom". The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand.

Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case."

It is well settled that a departmental enquiry can be held for the very same charges on which a criminal case has been institute. It is only in exceptional circumstances, where the facts and evidence in both the departmental proceedings and the criminal case are the same without there being any iota of difference, would it necessitate departmental proceedings not being proceeded with. The petitioners' contention that in view of their being acquitted in the criminal case, disciplinary proceedings cannot be instituted for the very same charge on which the criminal

court had acquitted them on merits, cannot therefore be accepted.

There is one other reason for rejecting this contention of the petitioners. The petitioners had earlier filed W.P.Nos.15153, 16193, 16198 and 16200 of 1987 before this Court and this Court, by common order dated 2.2.1995, while disposing of the writ petitions held thus:

"Mr.A.Giridhar Roa, representing the petitioners submits that even though the petitioners were prosecuted for theft of rice, they were acquitted and that no disciplinary enquiry can be initiated.

I do not concur with his arguments. Acquittal of the petitioner from criminal charge of theft cannot bar the initiation of disciplinary proceedings by the respondents. As such, it is open to the respondents to initiate disciplinary proceedings against the petitioners, in which case the principles of fair play, concerning disciplinary action, gave get to b followed. It is needless to mention hat until the petitioner's services are validly terminated in disciplinary proceedings, they shall be entitled for all the salaries and emoluments attached to the post of chowkidar"

Writ petitions are disposed of accordingly. No costs."

The aforesaid order of this Court has attained finality and since it is a judgment inter parties, it is binding on the petitioners herein. This Court categorically held that acquittal of the petitioners from the criminal charge of theft cannot bar initiation of disciplinary proceedings by the respondents and that it is open to the respondents to initiate disciplinary action against them. In view of the order passed in W.P.No.15153 of 1987 and batch dated 2.2.1995, it is not open to the petitioners to raise the very same contentions, all over again, in the present writ petition. On this ground also the aforesaid contention of the petitioners is to be rejected.

Since the petitioners have submitted their statement of defence to the proceedings of 1st respondent dated 25.11.1999 and since the final orders earlier passed on 18.7.2001 have been cancelled, vide proceedings dated 1.8.2001, it is now open to the respondents to pass final orders in the disciplinary proceedings, in accordance with law.

The writ petition fails and it is accordingly dismissed. However, in the circumstances, without costs.

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